

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                           |   |                                    |                                 |
|--|--|---------------------------|---|------------------------------------|---------------------------------|
| Investigator:<br>Simon Wang                      | Team:<br>Squad #7                                  | CCRB Case #:<br>201807123 | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 07/29/2018 2:40 PM   | Location of Incident:<br>Yankee Stadium substation | Precinct:<br>44           | 18 Mo. SOL<br>1/29/2020                               | EO SOL<br>1/29/2020                |                                 |
| Date/Time CV Reported<br>Wed, 08/29/2018 9:09 AM | CV Reported At:<br>CCRB                            | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 08/29/2018 9:09 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |
|             |              |
|             |              |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. POM Robert Miceli   | 12143  | 950886 | PBBX    |
| 2. An officer          |        |        |         |
| 3. An officer          |        |        |         |
| 4. POM Harry Pell      | 07048  | 952100 | PBBX    |
| 5. POM Lanser Montilla | 05568  | 953132 | PBBX    |
| 6. SGT Michael Cohn    | 02237  | 932476 | PBBX    |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Edward McClain | 14159     | 943544 | PBBX     |

| Officer(s)             | Allegation   | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A. An officer          | Force: An officer used a chokehold against § 87(2)(b)                        |                             |
| B. POM Robert Miceli   | Force: Police Officer Robert Miceli used physical force against § 87(2)(b)   |                             |
| C. POM Harry Pell      | Force: Police Officer Harry Pell used physical force against § 87(2)(b)      |                             |
| D. POM Lanser Montilla | Force: Police Officer Lanser Montilla used physical force against § 87(2)(b) |                             |
| E. An officer          | Force: An officer used physical force against § 87(2)(b)                     |                             |
| F. SGT Michael Cohn    | Abuse: Sergeant Michael Cohn did not obtain medical treatment for § 87(2)(b) |                             |

## Case Summary

On August 29, 2018, § 87(2)(b) filed this complaint by phone with the CCRB.

On July 29, 2018, at approximately 2:40 p.m., § 87(2)(b) was arrested for ticket speculation outside of Yankee Stadium in the Bronx. § 87(2)(b) was escorted into the Yankee Stadium NYPD substation. While inside the substation, § 87(2)(b) refused to relinquish the proceeds of his ticket speculation to PO Robert Miceli of the Yankee Stadium Detail of Patrol Borough Bronx. An unidentified officer attempted to place § 87(2)(b) in a chokehold (**Allegation A: Force – § 87(2)(g)**). PO Miceli, PO Harry Pell and PO Lanser Montilla, pulled § 87(2)(b) onto the ground (**Allegations B, C, and D: Force – § 87(2)(g)**). One of them allegedly placed a knee on his head (**Allegation E: Force – § 87(2)(g)**). § 87(2)(b) suffered an abrasion to his elbow. § 87(2)(b) alleged that his request for medical attention was refused (**Allegation F: Abuse of Authority – § 87(2)(g)**).

There was no video of this incident.

## Findings and Recommendations

**Allegation (A) Force: An officer used a chokehold against § 87(2)(b)**

**Allegation (B) Force: Police Officer Robert Miceli used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Harry Pell used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Lanser Montilla used physical force against § 87(2)(b)**

**Allegation (E) Force: An officer used physical force against § 87(2)(b)**

PO Miceli, PO Pell and PO Montilla stated that they were involved in placing § 87(2)(b) onto the ground and handcuffing him while inside the Yankee Stadium police substation. It remains in dispute whether any officer attempted to place § 87(2)(b) in a chokehold or knelt § 87(2)(b) on the back of the head.

In his CCRB interview, § 87(2)(b) initially denied that he had exchanged baseball tickets for money. However, later in the statement, he admitted that he had sold a ticket to an unidentified man outside of Yankee Stadium for \$30. He was then arrested by PO Miceli and detained inside the Yankee Stadium police substation (**BR 1**).

§ 87(2)(b) stated that while they were inside the Yankee Stadium substation, PO Miceli asked him to relinquish the \$30 he received as proceeds for selling the ticket. § 87(2)(b) was inside the holding pen and therefore his handcuffs had been removed. § 87(2)(b) told PO Miceli, “No you can’t do that. That’s illegal. He’s already getting in for free. To hell with that. Fuck him. You guys are fucking idiots.” An officer said something in reply to § 87(2)(b) but he did not hear what it was, nor could he tell who said it. An officer behind § 87(2)(b) whom he could not see, suddenly put an arm around § 87(2)(b)’s neck. § 87(2)(b) turned his head to the left and tilted his head down with his chin against his shoulder, blocking his neck from the officer’s arm and

preventing himself from being choked. § 87(2)(b) was then pulled to the ground, where he was no longer in a chokehold. § 87(2)(b) did not claim to have suffered any injuries due to the chokehold. In his notice of claim (**BR 2**), § 87(2)(b) did not mention being placed in a chokehold or an arm around his neck. § 87(2)(b) stated that PO Miceli and two other officers whom he could not identify were near him when this happened. Two other officers whom he also could not identify were in the general vicinity. § 87(2)(b) knew PO Edward McClain of the Yankee Stadium Detail by reputation, and stated that PO McClain was present during his arrest, but did not know whether PO McClain was present in the holding pen at this time.

§ 87(2)(b) stated that as he was placed in a chokehold, two other officers whom he could not see each grabbed a hold of his arms and pulled him towards the ground. § 87(2)(b) moved his feet in an attempt to remain standing upright, but the combination of the three officers pulling down upon his arms and from the chokehold caused § 87(2)(b) to fall onto his knees initially, and then onto his stomach. Once § 87(2)(b) was face-down on the ground, an officer placed a knee on the back of § 87(2)(b)'s head. § 87(2)(b) stated he was able to shake off the knee on the back of his head by shaking his head. § 87(2)(b) was handcuffed, and the \$30 in his pockets were removed. § 87(2)(b) did not recall whether he had any visible marks or injuries after he was handcuffed. He stated he felt dizzy and felt pain in his neck and back. § 87(2)(b) later obtained medical treatment, which involved X-ray scans and a prescription for Tylenol. However, he was not aware of any diagnosis.

§ 87(2)(b) was also detained in the substation holding pen at the time of the incident. § 87(2)(b) initially stated that an officer “grabbed” § 87(2)(b) by the neck while other officers grabbed his arms. However, when asked for more details of the officers’ actions, § 87(2)(b) would only say that the officers “grabbed” § 87(2)(b) and he could not recall how they grabbed him nor provide any specifics. § 87(2)(b) also could not describe the officer that may have grabbed § 87(2)(b) by the neck. § 87(2)(b) stated that he is a friend of § 87(2)(b) but was arrested separately from him on that day. § 87(2)(b) and § 87(2)(b) discussed the incident together afterwards. § 87(2)(b) was arrested by PO McClain on § 87(2)(b), and stated that PO McClain was present with three other officers in the holding pen, but did not recall what role PO McClain took in the incident. § 87(2)(b) and § 87(2)(b) were identified as the only other civilians detained in the Yankee Stadium substation at the time of the incident. Despite exhaustive contact attempts, neither of them could be reached for a statement.

PO Miceli stated that he informed § 87(2)(b) that he needed to vouch for the \$30 as arrest evidence. § 87(2)(b) refused and held up two fists at PO Miceli which he described as “squaring up” in a fighting stance. PO Miceli believed that § 87(2)(b) was about to assault him. § 87(2)(b) then stated, “I sold it. It’s mine. We could go right now if you want.” PO Miceli reached towards § 87(2)(b)'s arms to handcuff him and § 87(2)(b) pushed PO Miceli’s arms aside. PO Miceli was unable to describe his subsequent actions apart from “grappling” with § 87(2)(b). He could not describe what parts of § 87(2)(b)'s body he was in contact with. PO Miceli stated that he and § 87(2)(b) fell to the ground together, but that PO Pell assisted in “taking § 87(2)(b) to the ground.” § 87(2)(b) was initially on his back while on the ground. PO Miceli flipped § 87(2)(b) over and handcuffed him while he was on his stomach. PO Miceli denied that any officer

placed their arm around § 87(2)(b)'s neck or used a chokehold and denied that any officer placed a knee in the back of § 87(2)(b)'s head.

PO Pell stated that he and PO Miceli were together when PO Miceli attempted to count and voucher § 87(2)(b)'s money. § 87(2)(b) allegedly told them, "You're not touching my fucking money." PO Pell also described § 87(2)(b) as "squaring up" by holding his two fists at chest and chin level, and standing with one leg in front of the other. PO Pell believed that § 87(2)(b) was about to fight them. PO Pell pointed out that police officers are prohibited from entering the holding pen with their gun belt or any weapons. PO Pell had deposited his gun and gun belt including pepper-spray, and baton in a locker prior to entering the holding cell. PO Pell only had handcuffs and handcuff keys. PO Montilla and PO Miceli did not mention whether they had their weapons on them. PO Pell stated that he first attempted to talk § 87(2)(b) into relinquishing the money, but § 87(2)(b) refused. PO Pell then grabbed § 87(2)(b)'s arm and that § 87(2)(b) was "struggling" with that arm. PO Pell stated that he "grappled" with § 87(2)(b) and they fell to the ground together. PO Pell stated that he did not intend to force § 87(2)(b) onto the ground. Once on the ground, § 87(2)(b) was on his side near a bench that was approximately 2 feet long and 18 inches off the ground. § 87(2)(b) attempted to crawl underneath the bench. PO Pell stated that he and PO Miceli grabbed § 87(2)(b) by the arms and belt loop and pulled him from underneath the bench. § 87(2)(b) was then handcuffed once on the ground. PO Pell denied any officer placed a knee on the back of § 87(2)(b)'s head. PO Pell did not recall whether PO Montilla was present.

PO Montilla stated that he was working on a computer in another room of the substation when he heard screaming and an exchange of voices from the cells. PO Montilla entered the cells and saw PO Miceli and § 87(2)(b) on the ground together. PO Montilla did not see what caused them to be on the ground. PO Montilla approached and attempted to grab § 87(2)(b)'s hands to handcuff him. PO Pell was also attempting to grab § 87(2)(b)'s arms. PO Montilla stated that § 87(2)(b)'s arms were hard and stiff when he grabbed hold. PO Montilla stated § 87(2)(b) was mostly on his side while on the ground, and did not recall him being in another position. PO Montilla did not see any officer place a knee on the back of § 87(2)(b)'s head. PO Montilla described the process of handcuffing § 87(2)(b) as "not long" - approximately 10 to 15 seconds.

The TRI and ISAR reports (**BR 3**) for this incident indicated that PO Miceli, PO Pell and PO Montilla were the only officers involved. The reports indicated that the only force used was a "forcible takedown" and the reason for the use of force was to "overcome resistance or aggression." It was noted that § 87(2)(b) suffered a "minor laceration/abrasion" and a photograph was taken of an elbow with an abrasion on it. § 87(2)(b) never mentioned this abrasion during his CCRB statement.

PO Miceli stated he did not recall seeing any injury on § 87(2)(b) after PO Miceli was shown the photograph of § 87(2)(b)'s elbow from the TRI report, PO Miceli stated that it refreshed his memory and he did see that injury. PO Miceli believed § 87(2)(b) received that injury during the incident, but he did not see what specifically caused it. PO Montilla did not recall seeing any injuries on § 87(2)(b) and when shown the photo of § 87(2)(b)'s elbow in the TRI, he did not recall seeing that injury. PO Pell stated that § 87(2)(b) had an abrasion on his elbow, but PO Pell did not see that abrasion.

Patrol Guide Procedure 221-01(**BR 4**) defines a chokehold as an action including, but not limited to any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. The procedure states that officers shall not use a chokehold.

§ 87(2)(g)  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation (F) Abuse of Authority: Sergeant Michael Cohn did not obtain medical treatment for** § 87(2)(b)

After § 87(2)(b) was handcuffed, he felt dizziness as well as pain in his neck and back. According to the command log, § 87(2)(b) was transported to central booking at 6:50 p.m. § 87(2)(b)

§ 87(2)(b) stated that as he was being escorted out of the Yankee Stadium substation for transport to central booking, he asked the desk sergeant where he was being taken and stated that he felt “woozy” and wanted to see a doctor. The sergeant allegedly told § 87(2)(b) to ask his transporting officers where he was being taken, but did not obtain medical treatment for § 87(2)(b). § 87(2)(b) did not ask his transporting officers for medical treatment and was transported to Bronx Central Booking. § 87(2)(b) stated that during pre-arraignment screening at central booking, he was transported to § 87(2)(b). § 87(2)(b) estimated he was at the hospital from 1:00 a.m. to 2:00 a.m. and was given Tylenol and an X-ray scan. According to the FDNY, they have no record of a pre-arraignment screening conducted for § 87(2)(b) (BR 6).

§ 87(2)(b) was transported to central booking at the same time as § 87(2)(b). § 87(2)(b) stated that officers provided medical treatment to § 87(2)(b) but would not elaborate on how this occurred. § 87(2)(b) repeatedly stated that he knew officers provided medical treatment because he knows that officers are required to.

Sgt. Cohn stated he was informed by an officer he did not recall that a physical altercation had occurred involving § 87(2)(b), PO Miceli, PO Pell and PO Montilla. Sgt. Cohn interviewed § 87(2)(b) about the incident to prepare an ISAR for the incident. Sgt. Cohn stated he observed an abrasion on § 87(2)(b)'s elbow and asked if he wanted medical treatment. § 87(2)(b) refused medical treatment. PO Miceli stated that after he handcuffed § 87(2)(b) he asked § 87(2)(b) “Are you OK? Do you need any attention?” He did not recall § 87(2)(b)'s response, but stated § 87(2)(b) did not ask for medical treatment. PO Pell also stated that immediately after § 87(2)(b) was handcuffed, he asked § 87(2)(b) “Are you OK? What do you need?” § 87(2)(b) did not ask for medical treatment. PO Montilla did not hear § 87(2)(b) ask for medical treatment and had no knowledge of what happened to § 87(2)(b) after he was handcuffed.

According to the Medical Treatment of Prisoner Report (BR 7), § 87(2)(b) had a “small abrasion” on his left elbow. It was noted that § 87(2)(b) did not request medical treatment and that he refused medical treatment at 2:50 p.m. § 87(2)(b) did not sign the report. There was no mention in § 87(2)(b)'s notice of claim of medical treatment being withheld.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 8).
- § 87(2)(b)  
§ 87(2)(b)  
■ § 87(2)(b)  
§ 87(2)(b)  
■ § 87(2)(b)  
§ 87(2)(b)

- PO Robert Miceli has been a member of service for eight years and has been a subject in four CCRB complaints and six allegations, of which one was substantiated:
  - 201303615 involved a substantiated allegation of physical force against PO Miceli. The board recommended charges and the NYPD imposed a forfeiture of 15 vacation days.
  - § 87(2)(g)
- PO Harry Pell has been a member of service for seven years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Lanser Montilla has been a member of service for seven years and this is the first CCRB complaint to which he has been a subject.
- Sgt. Michael Cohn has been a member of service for 16 years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming pain and suffering, loss of wages, loss of property, and seeking \$1,000,000 as redress (**BR 2**). There is no 50H hearing scheduled.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: 7

|               |           |                      |       |
|---------------|-----------|----------------------|-------|
| Investigator: | _____     | <u>SI Simon Wang</u> | _____ |
|               | Signature | Print Title & Name   | Date  |

|               |           |                    |       |
|---------------|-----------|--------------------|-------|
| Squad Leader: | _____     | _____              | _____ |
|               | Signature | Print Title & Name | Date  |

|           |           |                    |       |
|-----------|-----------|--------------------|-------|
| Reviewer: | _____     | _____              | _____ |
|           | Signature | Print Title & Name | Date  |